

**BEFORE THE
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

DEPT. OF TRANSPORTATION
FMS-100

249669

2003 JUL 28 P 4:58

In the Matter of:

TRUX TRANSPORTATION, INC.

Respondent.

**Docket No. FMCSA-2001-9357 -6
(Eastern Service Center)**

ORDER APPOINTING ADMINISTRATIVE LAW JUDGE

The claimant in this proceeding filed a Motion For Final Order requesting that I issue a Final Order imposing a civil penalty. Respondent, which had requested an oral hearing in its reply to the Notice of Claim, filed a response to the Motion For Final Order.

In the past, the Chief Safety Officer, after carefully considering the evidence and legal arguments advanced by the parties, determined whether an oral hearing was warranted to resolve the issues. This process has contributed to a large enforcement case backlog that has resulted in long delays in issuing Final Orders or assigning cases for oral hearing.¹ The Chief Safety Officer can refer a case for hearing to resolve questions of fact, issues of law or in the interests of justice.² Lengthy delays in resolving enforcement cases clearly do not serve the interests of justice. Therefore, I am denying claimant's

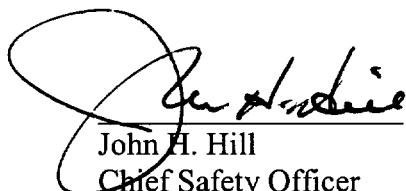
¹ Of the 140 enforcement cases involving a Motion For Final Order that were pending before the Chief Safety Officer as of June 30, 2003, 109 have been pending for more than a year. Of these 109 cases, 48 have been pending for two years or more. Since cases usually are not docketed until a Motion For Final Order is filed—which may occur months or years after issuance of the Notice of Claim—the violations involved in these cases may be several years old by the time the case is finally decided.

² *In the Matter of Empire Transport Co., Inc.*, Docket No. FHWA-97-2692, Order, October 21, 1994, at 3, citing *In re Gunther's Leasing Transport, Inc.*, 58 Fed. Reg. 16985, 16986 (FHWA 1993)(Order).

Motion For Final Order and granting respondent's request for oral hearing. The denial of the motion is without prejudice, i.e., it does not preclude the claimant from seeking similar relief by filing a Motion For Summary Judgment with the Administrative Law Judge.

Therefore, in accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge, to be designated by the Chief Administrative Law Judge of the Department of Transportation, to preside over this matter and render a Decision. The proceeding shall be governed by Subparts D and E of 49 CFR Part 386 and all orders issued by the Administrative Law Judge.

It Is So Ordered.



John H. Hill
Chief Safety Officer

Federal Motor Carrier Safety Administration

7-22-03
Date

CERTIFICATE OF SERVICE

This is to certify that on this 28th day of July 2003, the undersigned mailed or delivered, as specified, the designated number of copies of the foregoing document to the persons listed below.

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